

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**BUTTE DIVISION**

**FILED**

**FEB 16 2018**

Clerk, U.S. District Court  
District Of Montana  
Helena

MICHAEL DiFRANCESCO, on  
behalf of himself and others similarly  
situated,

Plaintiff,

vs.

STEVE BULLOCK, in his official  
capacity as Governor of Montana; TIM  
FOX, in his official capacity as  
Attorney General of Montana; SARAH  
GARCIA, in her official capacity as  
Administrator of the Motor Vehicle  
Division; and MICHELE  
SNOWBERGER, in her official  
capacity as Bureau Chief of the Driver  
Services Bureau,

Defendants.

No. CV 17-66-BU-SEH

**ORDER**

Plaintiff Michael DiFrancesco filed this case on August 31, 2017, as a class action under Fed. R. Civ. P. 23(a)(1)-(4) and 23(b)(2).<sup>1</sup> Defendants appeared and

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<sup>1</sup> Doc. 1.

filed a Motion to Dismiss Complaint (With Prejudice)<sup>2</sup> and supporting memorandum<sup>3</sup> on October 17, 2017. A response memorandum<sup>4</sup> and a reply<sup>5</sup> were later filed.<sup>6</sup> No motion for class certification by Plaintiff or to bar certification by Defendants has been filed.

Fed. R. Civ. P. 23(a) and (c)(1)(A) and (B) provide in part:

(a) **Prerequisites.** One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

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<sup>2</sup> Doc. 11.

<sup>3</sup> Doc. 12.

<sup>4</sup> Doc. 14.

<sup>5</sup> Doc. 15.

<sup>6</sup> November 7, 2017, and November 21, 2017.

**(1) *Certification Order.***

**(A) *Time to Issue.*** At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

**(B) *Defining the Class; Appointing Class Counsel.*** An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

The Court has determined to resolve whether to certify the action as a “class action” before taking up or addressing other issues that may be appropriate for the Court’s consideration.

**ORDERED:**

1. The Plaintiff shall file an appropriate motion for class certification on or before March 2, 2018, at 4:45 p.m. The motion is expected to: (1) define the class; (2) request certification of the class under Fed. R. Civ. P. 23(a) and (b); (3) identify the class representative; (4) identify class counsel; and (5) shall be accompanied by a brief in support which fully sets forth by description the facts, circumstances and evidence claimed by Plaintiff to justify and warrant class certification, and shall include, but shall not be limited to, address of the

requirements of all applicable provisions of Fed. R. Civ. P. 23(a), (b), (c) and (g)(1).

2. Defendants shall have to and including March 16, 2018, at 4:45 p.m. in which to file a motion in opposition to certification, accompanied by a brief opposing certification, or, in the alternative, to file a response brief in opposition to the motion for certification.

3. A reply brief from Plaintiff will be due on or before March 30, 2018, at 4:45 p.m.

4. In addition to the briefs to be filed in support and opposition to certification, the parties are directed to meet and confer and to file with the Court a joint report on or before March 30, 2018, at 4:45 p.m. outlining by general description: (1) discovery necessary to determination of class certification issues to be undertaken and completed; and (2) an estimate of the time reasonably required to undertake and complete such discovery.

5. The Court will set by separate order, or orders, such other and further hearings relevant to determination of class certification as may be warranted.


6. Defendants' Motion to Dismiss Complaint (With Prejudice)<sup>7</sup> is DENIED WITHOUT PREJUDICE to renewal if appropriate following

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<sup>7</sup> Doc. 11.

determination of class certification.

DATED this 16<sup>th</sup> day of February, 2018.

  
SAM E. HADDON  
United States District Judge